

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 4:15-cr-78-DPM

MICHAEL SHON HOLBERT

Reg. No. 23220-009

DEFENDANT

ORDER

1. Holbert moves for immediate release under 18 U.S.C. § 3582(c)(1)(A)(i). He has cataracts; his vision is deteriorating; and because of the ongoing COVID-19 pandemic, he can't get care from an outside doctor. *Doc. 68*. The first and dispositive issue is exhaustion. 18 U.S.C. § 3582(c)(1)(A). Holbert acknowledges he hasn't requested that the Bureau of Prisons file a compassionate release motion on his behalf or exhausted his administrative rights to appeal a denial of that request. *Doc. 68 at 3*; 28 C.F.R. §§ 571.63 & 542.15.

This Court has concluded that unless a warden fails to timely respond to a compassionate release request, an inmate must fully exhaust his administrative remedies before filing a motion in the district court. *United States v. Cox, Doc. 197* in E.D. Ark. No. 4:98-cr-73-DPM (8 September 2020). Further, this exhaustion requirement is

jurisdictional and can't be waived. *Ibid.* Holbert's motion, *Doc. 68*, is therefore denied without prejudice for lack of jurisdiction.

2. The Court directs the Clerk to send Holbert a copy of the Court's *Cox* opinion with this Order.

So Ordered.

D.P. Marshall Jr.

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United States District Judge

4 February 2021